



The following constitutes  
the order of the court. Signed January 29, 2013

A handwritten signature in black ink, reading "Charles Novack", is positioned above the printed name of the judge.

Charles Novack  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:

JOHN ANTHONY SALOMON,  
Debtor.

Case No. 10-59862 CN

Chapter 7

MATTHEW TYE,  
Plaintiff,

Adversary No. 10-5416

**MEMORANDUM DECISION**

vs.

JOHN ANTHONY SALOMON,  
Defendant.

On November 20, 2012, this court conducted a trial on plaintiff Matthew Tye's ("Tye") adversary complaint. The following constitutes this court's findings of fact and conclusions of law under F.R.B.P. 7052.

Tye's claims for relief arise from his tenancy in an Irvine, California residence owned by defendant John Anthony Salomon ("Salomon"). From approximately June 2007 through March 2009, Tye rented a bedroom, adjoining bathroom, and the shared use of the residence's common space from Salomon. Tye alleges that in or about June 2008, Salomon commenced an unrelenting campaign of harassment which deprived him of his tenancy rights and which ultimately forced him

1 to vacate the Irvine residence. Tye asserts that Salomon's conduct (which is described in detail  
2 below) violated California Civil Code §§ 1942.5, 789.3 and 1940.2, and gives rise to non-  
3 dischargeable claims under Bankruptcy Code § 523(a)(6). Critically, Tye further asserts that he is  
4 entitled to judgment on his § 523(a)(6) claims by virtue of his Orange County Superior Court default  
5 judgment against Salomon. In November 2008, Tye commenced litigation against Salomon and  
6 several other parties in Orange County Superior Court and obtained a \$340,000 default judgment  
7 against Salomon on his tenancy rights causes of action. Salomon unsuccessfully moved to vacate  
8 the default judgement, and then timely appealed the default judgment and the denial of his motion to  
9 vacate. That appeal was pending when Salomon filed his Chapter 7 bankruptcy in September 2010.  
10 Salomon's Chapter 7 filing stayed his appeal, and the parties never obtained relief from this court to  
11 pursue it.

12 Tye asserts that this court must fully defer to the Orange County default judgment and  
13 simply determine whether the default judgment supports the entry of a non-dischargeable judgment  
14 against Salomon. This court rejected this legal theory when it denied Tye's motions *in limine*.  
15 Because Tye's trial strategy was fully predicated on this argument, this court will summarize Tye's  
16 argument and the reasons why this theory is without merit.

#### 17 18 OVERVIEW OF THE STATE COURT AND BANKRUPTCY COURT LITIGATION

19 In November 2008, Tye sued Salomon, Stacy Gilty, and several "Doe" defendants in Orange  
20 County Superior Court (Case No. 30-2008-0014389) (the "Superior Court") under various causes of  
21 action including those created by Civil Code §§ 1942.5, 789.3 and 1940.2. The Superior Court  
22 entered a \$340,000 default judgment in Tye's favor in January 2010. The default judgment included  
23 substantial punitive damages. Salomon unsuccessfully moved to vacate the default judgment, and  
24 thereafter timely appealed the entry of the default judgment and the denial of his motion to vacate.  
25 When Salomon filed his Chapter 7 case on September 22, 2010, his appeal was still pending before  
26 the California Court of Appeal. Salomon received his Chapter 7 discharge on December 28, 2010  
27 (Tye timely filed this adversary proceeding on December 27, 2010), and the Chapter 7 case was  
28 closed on January 18, 2011. At no time did either party obtain relief from the automatic stay to

1 pursue the appeal<sup>1</sup>.

2 This court issued a routine status conference order in this adversary proceeding, which set  
3 discovery deadlines. Despite ample time to conduct discovery, neither Tye nor Salomon completed  
4 any discovery by the original discovery cut-off date. At the request of the parties, this court  
5 continued the discovery cut-off date to July 31, 2012 and set the matter for trial on November 5,  
6 2012.<sup>2</sup>

7 Tye did not file witness or exhibit lists as required by this court's pre-trial order. Instead, on  
8 October 30, 2012, Tye filed three motions *in limine*, which this court heard on November 5, 2012.  
9 Tye sought to preclude Salomon from introducing any evidence that would challenge the findings  
10 and damages award contained in the Superior Court default judgment. The court denied the first,  
11 second and fourth motions from the bench, and issued a memorandum order denying the third *in*  
12 *limine* motion, which explained this court's reasoning why the default judgment had no preclusive  
13 effect. *See* Docket No. 63. Simply put, a state court default judgment on appeal is not a final order  
14 entitled to issue preclusion (see *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d, 1106,  
15 n.3 (9<sup>th</sup> Cir. 2010)).

16 To repeat, Tye never filed a witness or exhibit list, and did not file a pre-trial request for this  
17 court to take judicial notice of anything. Notwithstanding these significant omissions, this court  
18 permitted Tye to testify at trial in narrative form. He was not allowed, however, to introduce any  
19 documentary evidence.

## 20 FACTS

21 In June 2007, Tye and Salomon entered into a month-to-month tenancy whereby Tye rented

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23 <sup>1</sup> Tye filed a motion for relief from stay on July 1, 2011 to allow Salomon's appeal to  
24 proceed. Tye did not appear at the relief from stay hearing, and this court denied the motion for lack  
25 for lack of prosecution. In retrospect, the motion should have been denied as being moot, since  
Salomon had received his Chapter 7 discharge and the Chapter 7 case had been closed for several  
months before he filed the relief from stay motion.

26 <sup>2</sup>Tye filed a motion to change venue on July 18, 2012. He argued, *inter alia*, that his  
27 witnesses were located in Southern California, and that it was more convenient for them to appear  
28 for trial in the Central District of California. This court heard and denied his motion on August 31,  
2012.

1 a bedroom, adjoining bathroom and enjoyed the use of common space in a four bedroom, three  
2 bathroom single family residence owned by Salomon, located at 24 Midsummer, Irvine, California  
3 (the "Premises"). At that time, Salomon lived in the master bedroom and rented out the remaining  
4 bedroom to another tenant. Salomon moved out of the Premises shortly after Tye moved in, and he  
5 rented the master bedroom to another tenant.

6 The relationship between Tye and Salomon was relatively harmonious until May 2008. At  
7 that time, Salomon asked Tye to clean the bathroom adjoining Tye's room in anticipation of a new  
8 tenant moving into the household. Since Tye had shared this bathroom with the outgoing roommate,  
9 he was expected to share this bathroom with the incoming roommate. This request triggered a series  
10 of disagreements between the Salomon and Tye, and on June 30, 2008 Salomon emailed Tye a 60-  
11 day notice to quit the premises<sup>3</sup>.

12 Tye testified that Salomon then began a systematic pattern of harassment in retaliation for  
13 Tye's failure to quit the Premises.<sup>4</sup> Salomon's alleged harassment can be roughly grouped into the  
14 following categories of conduct: (a) restricting Tye's bathroom access, (b) interfering with Tye's  
15 use of the Premises's mailbox, (c ) cutting off Tye's internet connection, and (d) rendering the  
16 Premises uninhabitable by canceling all the utilities and removing Salomon's appliances and  
17 furniture from the Premises. Tye testified that Salomon's retaliatory acts continued through January  
18 2009.

#### 19 THE BATHROOM INCIDENT

20 Tye testified that Salomon interfered with his bathroom rights on six separate occasions,  
21 which caused Tye to miss 96 hours of work. Tye did not provide the specific dates when this  
22 conduct occurred, and Salomon's testimony provided ample reason for his actions regarding the  
23 bathroom. This court finds Salomon to be a more credible witness regarding these allegations.

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25 <sup>3</sup>See Cal. Civ. Code §1946.1(b). Salomon emailed Tye another 60 day notice to quit on  
26 October 15, 2008. Salomon also emailed Tye a three-day notice to pay late rent for September and  
27 October on October 15, 2008, and another three-day notice for December rent on December 1, 2008.  
See Cal. Code of Civ. Proc. §1161.

28 <sup>4</sup>Salomon did not explain why he did not pursue the original and subsequent notices to quit.

1 Tye testified that his lease gave him exclusive and sole access to this particular bathroom  
2 (Tye did not introduce his written lease into evidence). Tye testified that Salomon's indiscretions  
3 include using the bathroom, without Tye's permission, for up to two hours at a time while playing  
4 loud music and singing along to the music. Tye further testified that Salomon also removed the  
5 shower curtain and other bathroom accessories in to prevent Tye from using the bathroom. Finally,  
6 Tye testified that Salomon stole bathroom supplies belonging to Tye's girlfriend.

7 Salomon denied these allegations. He testified that Tye shared this bathroom with at least  
8 one other roommate, and that he did not have exclusive rights to it. While Salomon agreed that he  
9 had occasionally used this bathroom, he testified that he spent a significant amount of time cleaning  
10 and repairing it, and he denied ever playing loud music or singing to the music when he used the  
11 bathroom. He also denied stealing any bathroom supplies. Given the lack of evidence other than the  
12 parties' own testimony, this court finds that Tye did not prove that the events in question occurred  
13 (or that Salomon was the culprit who stole his girlfriend's bathroom supplies) by a preponderance of  
14 the evidence.

#### 15 THE INTERNET TAMPERING

16 Tye testified that in November 2008, Salomon and, at Salomon's direction, Stacy Gilty (one  
17 of Tye's roommates), began tampering with his internet access, which Tye needed for his law  
18 practice<sup>5</sup>. The Premises' internet connection was located in the master bedroom, and Tye  
19 maintained that his internet access was unavailable on at least three separate occasions between mid-  
20 November 2008 and the end of December 2008. After his internet provider could not (by telephone)  
21 resolve the problem, Tye testified that he examined the routing box and discovered that the plug or  
22 switch connecting the internet to his room was unplugged. He corrected the problem by manually  
23 reconnecting this plug. Tye testified that Salomon was at the Premises on at least one of the  
24 occasions when his internet connection failed.

25 Tye testified further that in late December 2008, when Salomon was removing his furniture  
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27 <sup>5</sup>Tye is a licensed California attorney, and he practiced from the Premises. Tye did not  
28 maintain an "office" *per se* from the Premises, and would visit clients outside of the Premises.

1 and appliances from the Premises (which is discussed in more detail below), Salomon or his agents  
2 removed the power supply from the internet routing box. This power supply, according to Tye, was  
3 only accessible to the internet service provider. Tye claims that when a technician came to the  
4 Premises to repair the routing box, Stacy Gilty, again allegedly at Salomon's direction, prevented the  
5 technician from entering the Premises.

6 Gilty did not testify at trial, and Salomon denied any involvement in these incidents. The  
7 court again determines that Tye did not establish, by a preponderance of the evidence, that Salomon  
8 was the culprit. First, this court received only the testimony of the parties without any corroboration  
9 from any third party. Salomon again testified credibly on this issue. Second, Salomon did not reside  
10 at the Premises, and Tye had several roommates who had access to the master bedroom. Given the  
11 ease by which Tye's internet connection could be terminated, Tye's roommates could have  
12 unplugged the connection, or the plug could have become loose on its own (as plugs sometimes do).  
13 Moreover, there was insufficient evidence that Gilty (or any other tenant) was acting on Salomon's  
14 behalf.

#### 15 MAILBOX TAMPERING INCIDENT

16 Tye testified that before mid-November 2008, he never used his mailbox key because Stacy  
17 Gilty routinely retrieved the mail from the mailbox and left it on the kitchen counter. Gilty  
18 apparently terminated his mail duties in mid-November, and Tye testified that his mailbox key did  
19 not work. Tye further testified that Salomon refused to provide him with a replacement key, and that  
20 after his roommates vacated the Premises, he re-keyed the mailbox at his own expense, and found  
21 that the mailbox was empty.

22 Salomon denied that he interfered with Tye's mail or that Tye ever asked for another key.  
23 This court again finds Salomon to be a credible witness. Simply, Tye offered nothing more than his  
24 own suppositions that Salomon tampered with his mail. This testimony, in light of Salomon's  
25 denials, does not establish these allegations by a preponderance of the evidence.

#### 26 THE FORECLOSURE

27 There is little factual dispute, however, regarding Salomon's response to the potential of a  
28 trustee's sale against the Premises. Salomon encountered financial problems in the summer of 2008,

1 and a notice of default was recorded against the Premises in mid-December 2008. In anticipation of  
2 the trustee's sale, Salomon informed Tye and his fellow roommates by email on December 8<sup>th</sup> that  
3 he would be "signing the property over to the bank" on December 15, 2008, and that he would then  
4 terminate the Premises's utilities services. In late December 2008, Salomon began removing his  
5 personal property from the Premises, including all of the appliances and furniture. Tye testified that  
6 Salomon attempted to remove certain fixtures in his bedroom but that Tye prevented him from doing  
7 so. Tye remained on the Premises, however, for several more months.

8 Salomon did not voluntarily transfer title to the Premises to the Bank on December 15, 2008.  
9 Instead, he retained a real estate agent to short-sell the Premises. In January 2009, Salomon emailed  
10 the remaining tenants (including Tye) that there would be potential buyers and agents inspecting the  
11 Premises as part of his attempt to sell the Premises. Salomon also communicated to them that  
12 anyone who remained in the Premises still needed to pay rent (Salomon testified, however, that he  
13 never made any attempt to collect rent after November 2008).

14 Tye thereafter informed Salomon's real estate agent that he believed that Salomon did not  
15 intend to sell the Premises but instead had retained her to force Tye to vacate the Premises. Tye's  
16 refusal to cooperate with Salomon's marketing efforts apparently caused the real estate agent to  
17 terminate her services, and the lender foreclosed on the Premises in April 2009.

#### 18 LEGAL DISCUSSION

19 Tye claims that he is entitled to a non-dischargeable judgment under Bankruptcy Code  
20 § 523(a)(6). This code section provides in pertinent part that a Chapter 7 debtor cannot discharge a  
21 debt "for willful and malicious injury by the debtor to another entity or to the property of another  
22 entity." Tye must prove his claim for relief by a preponderance of the evidence. *Grogan v. Garner*,  
23 498 U.S.279, 291 (1991).

24 The "willful" and "malicious" prongs of § 523(a)(6) are analyzed separately. *In re Sicroff*,  
25 401 F.3d 1101,1105 (9th Cir. 2005). The Ninth Circuit has held that an injury is 'willful' "when the  
26 debtor has a subjective motive to inflict [such] injury" or when the debtor believes that injury is  
27 "substantially certain to result from his own conduct." *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1142  
28 (9th Cir. 2002). A bankruptcy court may consider circumstantial evidence to establish what the



1 debtor must have known at the time of the conduct in question, rather than simply relying on what a  
2 debtor admits he knew. *Su*, at 1146, n. 6.

3 A “malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily  
4 causes injury, and (4) is done without just cause or excuse.” *Petralia v. Jercich (In re Jercich)*, 238  
5 F.3d 1202, 1209 (9th Cir. 2001). Malice may be inferred based on the nature of the wrongful act.  
6 *In re Ornsby*, 591 F.3d 1199, 1207 (9th Cir. 2010).

7 As for damages, while Tye asserts that he suffered some monetary damages due to his loss of  
8 work, he primarily asks this court to award him the \$340,000 in damages found in the Superior  
9 Court’s default judgment. The \$340,000 in damages reflect statutory awards found in California  
10 Civil Code §§ 1942.5, 789.3, and 1940.2. These statutes award damages to a tenant when he or she  
11 is generally the victim of a “retaliatory eviction.” The aggrieved tenant must establish that his/her  
12 landlord engaged in certain types of proscribed conduct to force the tenant to vacate the leased  
13 premises.

14 Tye has not met his burden of proof, and this court enters judgment in favor of Salomon.  
15 First with regard to the bathroom, internet, and mailbox allegations, this court is not persuaded that  
16 the events in question occurred and/or that Salomon was the culprit. At the very least, this court is  
17 not persuaded that Salomon used the bathroom wrongfully, with the intent of harming Tye, and that  
18 his use necessarily injured Tye.

19 Tye’s mailbox claims are similarly defective. Tye did not present any credible evidence that  
20 Salomon or his agents intentionally prevented Tye from obtaining his mail with the intent of forcing  
21 Tye to vacate the Premises. Tye testified that he never used his mailbox key before mid-November  
22 2008, so it is difficult for this court to conclude that the key ever worked on the mailbox, and that  
23 his subsequent inability to access his mail was due to a change in the mailbox lock. While Tye  
24 testified that Salomon refused to provide him with another key, Salomon denied that Tye requested a  
25 new key. Given this, Tye did not prove this allegation by a preponderance of the evidence.

26 Tye also cannot meet his burden of proof regarding his internet allegations. Salomon was  
27 only at the Premises during one of this incidents, and it is equally as likely that one of Tye’s  
28 roommates dislodged or removed the plug, or that the plug was dislodged by other means. No



1 credible evidence was presented that Salomon intentionally interfered with Tye's internet  
2 connection with the intent of forcing him to vacate the Premises.

3 Finally, while Salomon admits that he removed his personal property from the Premises and  
4 terminated the utilities ahead of a trustee's sale, this court finds that Salomon's conduct was not  
5 willful or malicious. Salomon defaulted on his note and Tye does not dispute that the Premises'  
6 sale, either voluntary or involuntary, was inevitable. Salomon openly informed his tenants of the  
7 situation by email. Despite this, Tye contends that Salomon's conduct was part of an elaborate ruse,  
8 executed in bad faith, to force him to vacate the Premises. The court disagrees with his analysis of  
9 the evidence, and again finds Salomon to be a credible witness regarding the events in question.  
10 Salomon removed his personal property in anticipation of losing title to the Premises, terminated the  
11 utilities to reduce his expenses, and investigated a short sale to possibly reduce his liability on the  
12 bank note. Tye did not establish by a preponderance of the evidence that Salomon intended to harm  
13 or injure him or that his conduct was wrongful, despite the fact that a foreclosure or sale may have  
14 required Tye to find new living quarters.

15 Section 523(a)(6) claims for relief generally take the form of intentional torts. *See Lockerby*  
16 *v. Sierra*, 535 F.3d 1038 (9<sup>th</sup> Cir. 2008). While the California Civil Code sections cited by Tye do  
17 provide for damages for certain intentional, wrongful conduct (and thus may qualify for § 523(a)(6)  
18 relief), Tye has not established Salomon's liability under them (and § 523(a)(6)) due to his inability  
19 to establish willful, intentional conduct that harmed him. Under Civil Code § 789.3, a landlord is  
20 liable for statutory damages if, with the intent to terminate the occupancy under any lease, he  
21 willfully causes, directly or indirectly, the interruption or termination of any utility service furnished  
22 to the tenant. As stated above, this court finds that Salomon did not terminate the utilities with the  
23 intent to terminate Tye's occupancy, but instead did so due to the Premises' soon to be pending  
24 trustee's sale. Simply, Salomon's motivation was not to evict Tye. The same is true regarding Civil  
25 Code § 1940.2. This code section prohibits, *inter alia*, the use or threatened use of force, willful  
26 threats or menacing conduct constituting a course of conduct that interferes with a tenant's quiet  
27  
28

1 enjoyment of the premises. No such conduct was proven herein.<sup>6</sup> Finally, Tye did not establish that  
2 Salomon retaliated against him under § 1942.5.

3 This court recognizes the difficulty in establishing § 523(a)(6) intent. Regardless, Tye's  
4 evidence was insufficient for this court to find that Salomon willfully and maliciously injured Tye.

5 **CONCLUSION**

6 Tye has failed to establish that Salomon's conduct caused a "willful and malicious  
7 injury" pursuant to § 523(a)(6) of the Bankruptcy Code. Accordingly, judgment is entered in  
8 Salomon's favor.

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10 **\* \* \* END OF ORDER \* \* \***  
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27 <sup>6</sup>Nor did Tye prove that Salomon committed extortion (§ 1940.2(a)(1)) or engaged in theft (§  
28 1940.2(a)(2)).

COURT SERVICE LIST

Matthew Tye  
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